

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**MICHAEL CHAD BLACK, ON  
BEHALF OF HIMSELF AND OTHERS  
SIMILARLY SITUATED,**

**Plaintiff,**

**v.**

**IDEAL CONCEPTS, INC.,**

**Defendant.**

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**CIVIL NO. A-24-CV-01323-ADA**

**DOCKET CONTROL ORDER PURSUANT TO RULES 16(b) AND 26(f)**

Came for consideration the above-styled matter. **IT IS HEREBY ORDERED** that the parties confer pursuant to Federal Rule of Civil Procedure 26(f) and file with the Court, on **May 12, 2025, both a joint proposed scheduling and discovery plan reflecting the Rule 26(f) criteria AND a completed version of the Court’s standard Scheduling Order.**<sup>1</sup> The parties or their counsel shall confer, complete and prepare the form, obtain the appropriate signatures, and **e-mail the proposed scheduling order in Word format to [TXWDml\\_LawClerks\\_WA\\_JudgeAlbright@txwd.uscourts.gov](mailto:TXWDml_LawClerks_WA_JudgeAlbright@txwd.uscourts.gov) no later than the end of business day, 5:00 pm on May 12, 2025.**

During the Rule 26(f) meeting, the parties or their counsel shall discuss the nature and basis of their claims and defenses, the possibilities for prompt settlement or resolution of the case, and the scope and type of discovery, including electronic discovery. The parties shall also arrange for the disclosures required by Rule 26(a)(1) and develop their joint

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<sup>1</sup> An example Scheduling Order may be found at Appendix A. In addition, a word document version may be found under the Austin Division Standing Orders tab on the Court’s website.

proposed scheduling/discovery plan. These are the minimum requirements for the meeting. The parties are encouraged to have a comprehensive discussion and are required to approach the meeting cooperatively and in good faith. The discussion of claims and defenses shall be a substantive, meaningful discussion. In addressing settlement or early resolution of the case, the parties are required to explore the feasibility of ADR between themselves as well. If the parties elect not to participate in an early ADR effort, the Court may nonetheless require a settlement conference shortly before trial.

In addressing the Rule 26(a)(1) disclosures, the parties shall discuss the appropriate timing, form, scope or requirement of the initial disclosures, keeping in mind that Rule 26(a)(1) contemplates that disclosures will be made by the date of the Rule 16(b) initial scheduling conference and will include at least the categories of information listed in the rule. Rule 26 affords the parties flexibility in the scope, form and timing of disclosures under both Rule 26(a)(1) (initial disclosures) and Rule 26(a)(2) (expert witness disclosures), but the parties' agreement on disclosures is subject to approval by the undersigned. In their discussion of disclosures, counsel shall address issues of relevance in detail, with each party identifying what it needs and why. The discussion shall include the sequence and timing of follow-up discovery, including whether that discovery should be conducted informally or formally and whether it should be conducted in phases to prepare for filing of particular motions or settlement discussions.

In addressing electronic discovery, the parties shall discuss what electronic sources each party will search, difficulty of retrieval, preservation of records, the form of production (electronic or hard-copy, format of production, inclusion of meta-data, etc.), cost of production and which party will bear the cost, privilege/waiver issues, and any other

electronic discovery issues present in the case. Before engaging in the Rule 26 discussion, the parties should determine who is most familiar with the client's computer system, what electronic records the client maintains, how the client's electronic records are stored, the difficulty/ease of retrieving various records, the existence and terms of the client's document retention/destruction policy, and whether the client has placed a "litigation hold" preventing destruction of potentially relevant records.

Finally, the Court **ORDERS** discovery disputes be resolved in the following manner:

**Procedure.** A party may not file a Motion to Compel discovery unless: (1) lead counsel with decision making authority have met and conferred in good faith to try to resolve the dispute, and (2) the party has contacted the Court's law clerk to summarize the dispute and the parties' respective positions.<sup>2</sup> When contacting the Court's law clerk for discovery or procedural disputes, the following procedures shall apply:

If the parties remain at an impasse after lead counsel have met and conferred, the requesting party shall email a summary of the issue(s) and specific relief requested to all counsel of record. The summary of the issue shall not exceed 500 words for one issue or a combined 1,000 words for multiple issues. The responding party has 3 business days<sup>3</sup> thereafter to provide an email response, also not to exceed 500 words for one issue or a combined 1,000 words for multiple issues. The specific relief requested should propose the exact language to be issued in a court order for each part of every disputed issue. The specific relief requested does not count toward the word limits.

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<sup>2</sup> The procedure outlined below is also the Court's preferred mechanism for handling disputes regarding procedural matters such as extensions of time, excess pages, etc. If the parties are unsure about whether a particular dispute should be handled by motion or discovery dispute procedure, they should contact the Court's clerks.

<sup>3</sup> Business days exclude weekends and federal holidays.

The Court encourages the parties to provide their submission in a Word document in the following table format, which clearly identifies the disputed issues and specific relief requested.

Example:

Issue	Requesting Party's Position	Responding Party's Position
RFP 1: All sale records of the Product.	Responding Party didn't produce anything. Responding Party keeps its sales records in a sales database.  Relief: Order that "Responding Party must produce a copy of the sales database within 7 days."	We found no sales records of the Product in the sales database.  Relief: Find that "no documents responsive to RFP 5 exist" and deny Requesting Party's relief.
ROG 5: Identify all employees who worked on the Product.	Responding Party only identified a subset of the employees.  Relief: Order that "Responding Party is compelled to fully respond to ROG 5 by identifying the names and locations of the remaining employees who worked on Product by [date]."	We identified the relevant employees. The other employees are not relevant, and it is too burdensome to identify every employee.  Relief: Order that "Responding Party need not identify any other employees in response to ROG 5."

Once the opposing party provides its response, the requesting party shall email the summaries of the issues to the Court's law clerks for both Judge Albright with opposing counsel copied. If a hearing is requested, the parties shall indicate in the email whether any confidential information will be presented. Thereafter, the Court will provide guidance to the parties regarding the dispute or arrange a Zoom or in-person hearing.

**Written Order.** Within 7 days of the discovery hearing, the parties shall email a joint proposed order to the Court's law clerk that includes the parties' positions from their dispute chart, the parties' requested relief, and the parties' understanding of the Court's ruling so that the arguments and outcome can be docketed. Parties shall send an editable version of the proposed order to the Court's law clerk with any disputed language in red and blue text. Parties shall indicate

whether the order should be sealed. Failure to provide a proposed written order for the docket results in waiver of the dispute for appeal.

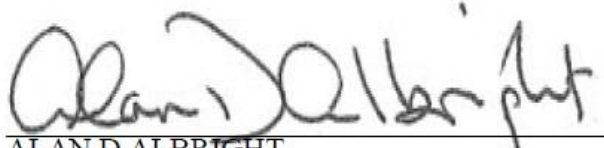
The Court would also like to relay the following to the parties:

- (1) Judge Albright is not opposed to counsel contacting his law clerks for matters of preference or non-substantive matters. His law clerks are well-trained on what is or isn't a substantive matter and will refuse to communicate in an ex-parte manner on any substantive matters. Parties should generally email any inquiries to the Court's law clerk. The Court's voicemail is not checked regularly. Email is the preferred contact method. Messages directed only to Judge Albright's law clerks may be sent to:

[TXWDml\\_LawClerks\\_WA\\_JudgeAlbright@txwd.uscourts.gov](mailto:TXWDml_LawClerks_WA_JudgeAlbright@txwd.uscourts.gov).

- (2) The Court has recently faced a spate of discovery objections that do not track the 2015 amendments to the Federal Rules. Please remember that boilerplate objections are unacceptable.
- (3) Speaking objections during depositions are improper. Other than to evaluate privilege issues, counsel should not confer with a witness while a question is pending. Counsel may confer with witnesses during breaks in a deposition without waiving any otherwise applicable privilege. Judge Albright is available during depositions if you feel a deponent is being evasive or his or her respective counsel is improperly objecting or invoking privilege. Please call the Court if this is happening; Judge Albright will resolve the matter and admonish the deponent to respond appropriately.
- (4) Parties shall promptly notify the Court if they reach a settlement in a case and request to stay any deadlines.

**SIGNED** this 21st day of April, 2025.

  
ALAN D ALBRIGHT  
UNITED STATES DISTRICT JUDGE

# APPENDIX A

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

v.

Plaintiffs,

Defendants.

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Case No.

**Jury Trial Demanded**

**JOINT PROPOSED SCHEDULING ORDER**

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court **ORDERS** that the following schedule will govern deadlines up to and including the trial of this matter:

Date	Event
	Discovery commences on all issues.
	All motions to amend pleadings or to add parties shall be filed on or before this date.
	Fact Discovery Deadline. Any discovery requests must be propounded so that the responses are due by this date.
	The parties asserting claims for relief shall submit a written offer of settlement to opposing parties on or before this date. All offers of settlement are to be private, not filed, and the Court is not to be advised of the same. The parties are further ORDERED to retain the written offers of settlement and responses as the Court will use these in assessing attorney's fees and court costs at the conclusion of trial.
	Parties with burden of proof to designate Expert Witnesses and provide their expert witness reports, to include all information required by Rule 26(a)(2)(B).
	Each opposing party shall respond, in writing, to the written offer of settlement made by the parties asserting claims for relief by this date. All offers of settlement are to be private, not filed, and the Court is not to be advised of the same. The parties are further ORDERED to retain the written offers of settlement and responses as the Court will use these in assessing attorney's fees and court costs at the conclusion of trial.
	Parties shall designate Rebuttal Expert Witnesses on issues for which the parties do not bear the burden of proof, and provide their expert witness reports, to include all information required by Rule 26(a)(2)(B).

	Expert Discovery Deadline. Expert discovery must be completed by this date.
	Any objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, not later than 14 days of receipt of the written report of the expert's proposed testimony or not later than 14 days of the expert's deposition, if a deposition is taken, whichever is later. <b>The failure to strictly comply with this paragraph will be deemed a waiver of any objection that could have been made pursuant to Federal Rule of Evidence 702</b>
	All dispositive motions shall be filed and served on all other parties on or before this date and shall be limited to 25 pages. Responses shall be filed and served on all other parties not later than 14 days after the service of the motion and shall be limited to 20 pages. Any replies shall be filed and served on all other parties not later than 7 days after the service of the response and shall be limited to 10 pages, but the Court need not wait for the reply before ruling on the motion.  Each party shall complete and file the attached "Notice Concerning Reference to United States Magistrate Judge"
	By this date the parties shall meet and confer to determine pre-trial deadlines, including, <i>inter alia</i> , exchange of exhibit lists, designations of and objections to deposition testimony, and exchange of demonstratives.
	By this date the parties shall exchange a proposed jury charge and questions for the jury. By this date the parties will also exchange draft Motions in Limine to determine which may be agreed.
	By this date the parties shall exchange any objections to the proposed jury charge, with supporting explanation and citation of controlling law.
	By this date the parties shall also submit to the Court their Motions in Limine.
	By this date the parties will submit to the Court their Joint Pre-Trial Order, including the identification of issues to be tried, identification of witnesses, trial schedule provisions, and all other pertinent information. By this date the parties will also submit to the Court their oppositions to Motions in Limine.
Preferably 1 to 2 months before trial.	Final Pre-Trial Conference. The parties shall provide to the Court an agreed jury charge with supported objections of each party, and proposed questions for the jury, at the final Pre-Trial Conference.
	The Court will attempt to schedule Jury Selection on a day during the week of _____. Otherwise, Jury Selection shall begin at 9:00 a.m. on _____.
	Jury Trial Commences at 9:00 a.m.



**SIGNED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Alan D Albright  
United States District Judge

AGREED:

By: \_\_\_\_\_

By: \_\_\_\_\_

Attorneys for Plaintiffs

Attorneys for Defendants